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Speech delivered on December 2, 2005, by Mary Gusella, Chief Commissioner, Canadian Human Rights Commission, to the Canadian Association of Independent Living Centres On the United Nations International Day of Disabled Persons.

Ladies and Gentlemen,

I was delighted to be invited by the Canadian Association of Independent Living Centres to speak today at this event to mark the International Day of Disabled Persons.

To quote from CAILC website: "Independent Living is founded on the right of people with disabilities to:

- Live with dignity in their chosen community;
- Participate in all aspects of their life; and
- Control and make decisions about their own lives."

What more needs to be said?

I could almost stop right here. Those three simple phases sum it up: equality, dignity and independence.

That is what human rights is about, this is what disability rights are about, that is what we are all striving for.

The theme for today is "Rights of Persons with Disabilities: Action in Development."

It suggests that we must focus on continuing development and improvement if persons with disabilities are to participate fully in all facets of Canadian society – economic, social and cultural. Today's event celebrates the 20th anniversary of Section 15 of the *Canadian Charter of Rights and Freedoms*. This was a major milestone in Canadian human rights history.

Section 15 guaranteed equal treatment before the law for everyone, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Some of you may remember those days vividly. It was an exciting time.

It may seem incomprehensible to us today, but you will recall that the words "mental and physical disability" were not

in the original draft.

It is in large part due to the active and important role played by leaders from the disabled persons community that this protection was embedded in Section 15.

Now, we can look back and be thankful that these groups had the courage and conviction to push hard for this inclusion, and that our political leaders had the wisdom to include it. But, as we all know, words are not enough. We have to put them into action.

Including mental and physical disabilities in Section 15 was a significant step forward in Canadian legislation on human rights.

As a result, all human rights laws, whether federal, provincial or territorial, provide protection against discrimination to persons with a wide range of physical and mental disabilities.

It goes without saying that everyone with any degree or type of disability should be able to claim human rights protection if they are denied a right or benefit because of discrimination.

For persons with disabilities, this means removing barriers to work, to learning, to public spaces and creating opportunities for full participation.

One of the most important tools to achieve equality is the use of positive measures that strive to improve the conditions of those that are disadvantaged.

The Charter recognizes that equality does not mean treating all individuals the same way.

Rather, it means recognizing and accommodating their differences. Along with Section 15's influence on legislation, it has also had an important impact on court rulings.

There are several examples, among them the landmark Supreme Court decisions in the Meiorin and Grismer cases in 1999.

These decisions clarified the legal responsibility of employers and service providers to ensure that all barriers to equality are eliminated from their policies, rules, standards, practices and services at the design stage, up to the point of undue hardship.

These are important decisions, knowing the barriers that persons with disabilities still face in the workplace.

We know that there has been progress on the legislative and policy fronts in the last 20 years.

But what impact has this had on disabled persons? There are still enormous challenges to be confronted.

Let's start with our own Commission.

In terms of the Canadian Human Rights Act, disability is consistently cited as the most common ground of discrimination. In 2004, more complaints were received from persons with disabilities than from any other group: they represented a full 39 per cent of all signed complaints.

And this has been a persistent pattern over the years. Among the designated groups protected under the Employment Equity Act, persons with disabilities fare the worst.

In the private sector, their representation in 2003 remained at 2.3 per cent, unchanged since 1997. They received only

1.1 per cent of all hires, substantially short of the 5.3 per cent benchmark.

In comparison, their representation in the public sector increased annually to 5.7 per cent from 3.9 per cent in 1997. But new hires represented only 3.1 per cent and no persons with disabilities were hired in the executive category. I talked of barriers earlier. Let me expand on that.

Our employment equity audits find that many barriers still exist which prevent persons with disabilities from gaining full access to employment, and hence, full participation in Canadian society.

For instance, there are still perceptions that persons with disabilities cannot perform at the same level, that they are not job-ready, that it costs too much to accommodate their needs.

We have seen several cases where accommodation is viewed as 'someone getting something extra'.

Some managers and employees are still uncomfortable dealing with persons with disabilities, and there is still the view from hiring managers that 'persons with disabilities slow things down'. The failure to have proper physical demands analysis of jobs plays a key role, and many facilities are still only partially accessible, if at all.

Elsewhere, a similar picture emerges which shows that persons with disabilities are among the most disadvantaged of all Canadians.

Consider the findings from the Participation and Activities Limitations Survey of 2001.

It shows that those who are disabled are about half as likely as those who are not disabled to work full time all year long.

And their average annual household income, although rising, is still well below those of other Canadians - about 79 per cent of those without disabilities in 2002.

Similarly, the 2001 Census found that 16 per cent of Canadians between 15 and 64 have a disability and that 60 per cent live below the poverty line.

When comparing the situation of persons with disabilities with those without disabilities, we find that :

- only 42 per cent are employed compared to 74 per cent;
- their average income is $22,451 compared to $31,509;
- just 11 per cent had a university degree compared to 20 per cent of those without disabilities.

The situation of Aboriginal persons with disabilities is particularly worrisome. They are worse off in almost all categories than other disabled Canadians.

Another sobering fact: Disability increases as we age – and our population is aging. This is not to say that there has not been progress. There is no doubt that there has been. Let's examine the other side of the coin.

I would like to take a few minutes to speak about the progress made by our own Commission over the past three years, as we transformed our way of doing business. This will be of particular interest to your community because such a large proportion of our complaints deal with disability cases.

Human rights groups will recall the days when the Commission was faced with a backlog of cases, complaints took up to 25 months to process, and new backlogs developed more quickly than old ones were solved.

The complaint processing system put a heavy emphasis on litigation which was costly, resource-intensive, and time-

consuming.

Complainants and respondents were frustrated with delays in the process.

This situation prevented the Commission from engaging in work with more far-reaching impact, such as prevention and proactive initiatives.

Our stakeholders remained unconvinced that the Commission could deal effectively with the most pressing human rights issues of the day.

So, we set out to create a new business model that would at least double our productivity and find savings from efficiencies. One that would allow us to pioneer new work to better advance human rights.

The Act confers four very important roles on the Commission: along with that of redressing discrimination against individuals by providing an effective remedy through a fair complaints process, the Commission also has a legislative mandate to correct persistent patterns of inequality, identify emerging issues and prevent discrimination before it occurs.

These four roles complement each other and each is crucial to the advancement of equality.

Our first task was to rethink the way we processed individual human rights complaints in order to make the system efficient. Because there is such a wide variety of complaints, any human rights process must offer a variety of methods to resolve them.

For example, a complaint by an individual seeking to be accommodated on the job should proceed differently than one relating to alleged discriminatory legislation.

The former can often be resolved quickly with the assistance of Commission staff. Staff can inform the parties on the issue of accommodation and help the parties work together to craft a solution.

In streamlining our business model, we have introduced an alternative dispute resolution program, and identified factors to assess individual cases and determine the best way of dealing with them.

Cross-disciplinary teams, specializing in various grounds such as disability, use their expertise to select the significant issues of a complaint at the outset. They then decide on the course of action that is most likely to resolve the complaint.

We have also undertaken the development of a special strategy to ensure that the particular nature of disability and race-based cases is fully considered in all aspects of our work.

That ranges from processing human rights complaints, to undertaking employment equity audits, to recruitment and staffing.

An alternative dispute resolution means a more efficient, compassionate approach to many cases. It also means more settlements. And in every settlement, the seeds of prevention are sowed.

Hand in hand with this approach, we have implemented more stringent measures towards monitoring settlements to verify that they have actually been carried out. We also want to ensure that the resulting policies and procedures implemented by employers appropriately reflect Commission standards.

All this is starting to pay off. Numbers speak for themselves. There has been

- an 85 per cent drop in the number of complaints two years or older,

- a 70 per cent increase in the number of final decisions reached,
- a 60 per cent increase in the number of cases resolved through Alternative Dispute Resolution, and
- a reduction in the average age of the caseload from 25 to 10 months.

The backlog of cases has all but been eliminated and measures are in place to ensure it will never return.

Implementation of the new business model has resulted in savings of over $1 million which are now being invested in emerging priorities, and pioneering new work to advance human rights.

For instance, we set up a Discrimination Prevention Branch to help employers establish a culture of human rights in their workplaces with the goal of preventing discrimination before it occurs.

We now have a Knowledge Centre which will enable us to put a special emphasis on knowledge to combat the level of ignorance which is so often at the root of discriminatory behaviour.

We have established a Strategic Initiatives Branch with the mandate to conduct public inquiries and undertake special reports to better address critical systemic issues.

Allow me to give you a few examples of pro active initiatives taken this past year which are of particular interest to your community.

We put out a report this year called No Answer.

It details the government's failure to adequately accommodate the needs of Canadians who, as a result of a disability, cannot use the regular telephone system.

We found that there is only a 50-50 chance that persons with disabilities will find a number listed for a TTY, and when a TTY is listed, there is only a one-in-three chance that they will be able to complete a call successfully.

Although TTYs may be an old and outmoded technology, it is still a useful one, and the normal expectation is that if you say you are going to do something, then you do it.

We made a number of specific recommendations to rectify the situation, including the adoption of new technologies such as voice-over-internet that could make telephone communication more accessible for many people with disabilities.

We are now conducting similar research on the availability of government publications in alternative formats and will be publishing a report shortly.

We have been involved for over fifteen years in the issue of barrier-free design standards including the accessibility of ATMs to wheelchair users and those who are visually impaired.

We were also involved in mediated settlements which resulted in both Global Television and the CBC introducing closed captioning on all their programming, and discussions are currently underway with regard to captioning of House of Commons debates.

At the international level, the United Nations is working on a Convention on the Rights of Persons with Disabilities. Canada is very much involved, along with Canadian disability advocacy groups at the negotiating sessions.

The Commission is participating in discussions in New York, and strongly supports this effort which will raise the profile of disability issues worldwide.

So we now have a complaints system that is efficient, and which allows us to free up resources and energies to also focus on broad systemic issues which will have a wider impact in redressing systemic discrimination.

It will give Canadians a better understanding that disability is more than an impairment, that it also includes social, economic and cultural disadvantages flowing from discrimination and exclusion.

We can draw encouragement from all of this. Sometimes we can see definite progress. Sometimes we have to point out serious problems.

But are we doing enough?

By "we," I mean all of us – federal, provincial and territorial authorities, the private and non-profit sectors, voluntary groups. As you may have guessed, I don't think we are.

So what more should we do? In my view, there are three key principles we should keep in mind:

- First, we must work together;
- Second, we must take a broad approach to the issues facing us; and
- Third, we must never give up until we achieve our goals.

In terms of working together, I am heartened by what is already going on in terms of joint federal-provincial-territorial activities.

I am pleased by conferences such as this one which bring people together from different fields.

I am also glad that governments generally recognize that they must consult outside experts and the people affected before implementing new programs or policies for disabled persons.

That seems elementary but, sadly, it hasn't always happened.

We need to do more of this networking and consultation. And we must work together on concrete projects and programs to help persons with disabilities.

As for my second point, I believe we must actively tackle the broad issues rather than always reacting to events. Why should we wait for problems to fester before we act?

Our Commission is acting on these first two points. I talked earlier about our new business model. Consultation is now part of the culture at the Commission.

We talked with people inside and outside the Commission before redesigning the way we operate. And we tested the new model in extensive discussions with all our stakeholders last year.

We know we can't operate in a vacuum. We need your feedback.

We cannot afford to wait for irritants to become a blight on the workplace and on people's lives. We must be less reactive and more proactive.

I know that we are not alone in doing these things. Human rights groups everywhere are thinking about how they can be more effective.

I want to go outside the Commission to illustrate my last point. As I said, we must have the inner fire to never give up until we achieve our goals.

David Lepofsky is an example of this kind of determined and visionary action. He is a blind lawyer active for more than two decades in pursuing rights for the disabled.

He was involved in the fight for inclusion of disability under section 15 of the Charter and most recently was chair of the Ontarians with Disabilities Act Committee.

Mr. Lepofsky and a band of committed individuals have worked hard for laws that would ensure that disabled Ontarians would be able to access private sector organizations and municipal and provincial offices and programs. He and his colleagues began the battle in 1994.

They weren't satisfied with half a loaf. He has said the original Ontarians with Disabilities Act in 2001 was good – but not good enough. He wasn't satisfied because it applied only to the public sector and lacked the teeth that he thought necessary to make it workable.

So he and his colleagues kept up the pressure. And this year, the legislature approved the Accessibility for Ontarians with Disabilities Act which meets many of their concerns.

I won't say ALL their concerns, because I wouldn't be surprised to hear they have further improvements in mind.

What I find encouraging from this story is that they did not give up after a number of disappointments.

They wouldn't let go of their vision. And, over time, a growing army of people supported them.

Let me leave you with these parting words from the famous anthropologist Margaret Mead: "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has".

The bottom line is that if we work together, if we tackle the broad issues, and if we stick to our vision, we can accomplish great things.

Thank you.

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